

presently claimed invention there would have been no motivation to combine the pressure control system disclosed in Izumi '631 with the volume control system disclosed Chopin '390. Furthermore, Applicant respectfully suggests that the Office has not carried its burden to show that such a combination teaches each and every element of Applicant's claims without reference to Applicant's disclosure. See M.P.E.P. § 706.02(j) .

As the Examiner states in the current Office action, Izumi '631 fails to teach means for regulating a patient's breathed volume, as claimed by Applicant. Likewise, Izumi '631 fails to teach Applicant's claimed measuring unit for providing a signal indicative of a measured volume of breathable gas. There is no suggestion or motivation disclosed in Izumi '631 for including a means to regulate or detect a patient's breathed volume, nor is there any suggestion or motivation disclosed in Chopin '390 for modifying the apparatus disclosed therein to conform with the structure disclosed in Izumi '631. Moreover, it is not clear from the Office action that the combination suggested by the Examiner actually provides each and every element of Applicant's claims. In particular, even if all the elements of Applicant claimed invention are present in the references, they are not connected so as to provide a workable breathing aid device. Thus, it appears that the Examiner has used impermissible hindsight to glean from Applicant's teachings so as to cut and paste from the cited references at least some of the elements of the presently claimed invention. Such cannot be the basis of a sustainable rejection of obviousness. Accordingly, the rejections under § 103 should be withdrawn.


In view of the foregoing, Applicant respectfully submits that claims 16-25 are in condition for allowance, and that the application should be passed to issue. Applicant is also filing in due course a Supplemental Information Disclosure Statement containing documents from a counterpart application filed with the European Patent Office that was recently revoked

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by the EPO's Division of Opposition (EPO Ser. No. 95 930 565.7 - Pat. No. EP 0 782 462). The Examiner is encouraged to contact the undersigned should there be any questions or resolvable matters regarding the present application.

Respectfully submitted,

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